

S. Grace Acosta, #9836  
Bradley Madsen, #13289  
**SCALLEY READING BATES  
HANSEN & RASMUSSEN, P.C.**  
15 West South Temple, Suite 600  
Salt Lake City, Utah 84101  
Telephone: (801) 531-7870  
Facsimile: (801) 531-7968  
Email: gacosta@scalleyreading.net  
Email: bmadsen@scalleyreading.net

Attorneys for Defendant Johnson Mark, LLC; William A. Mark; Butch Johnson.

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>HUGO MARTINEZ and CLAUDIA MARTINEZ,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BUTCH JOHNSON, WILLIAM A. MARK and JOHNSON MARK LLC,</p> <p style="text-align: center;">Defendants.</p>	<p><b>REQUEST FOR SCHEDULING CONFERENCE</b></p> <p>Case No.: 2:11-cv-00157-DN</p> <p>Judge:</p> <p>Magistrate Judge: David Nuffer</p>
--	---

Given the multitude of cross-motions in this case, Defendants Butch Johnson, William A. Mark and Johnson Mark LLC, hereby requests a telephone scheduling conference with the court to address what motions remain pending before the court and to create a timeline for the parties' responses to said motions.

Defendants would like to address the following motions:

**(1) Defendant's Motion to Dismiss, Docket Item #17 and #18, filed July 6, 2011**

On July 6, 2011, Defendants filed a Motion to Dismiss. Plaintiff responded to the Motion to Dismiss on August 18, 2011 (Docket Number 34) but also sought leave to file an amended complaint.<sup>1</sup> If this court grants Plaintiffs Motion for Leave to Amend the Complaint, then Defendants' Motion to Dismiss is moot. Defendants ask that its obligation to file a reply brief to the Motion to Dismiss (presently due September 1, 2011) be stayed pending the court's ruling on the Motion for Leave to File An Amended Complaint. If the Court grants the Motion to File An Amended Complaint, then Defendants' Motion to Dismiss is rendered moot and Defendants will need to file a new Motion to Dismiss as against the Second Amended Complaint if they choose to do so.

**(2) Plaintiff's Motion for Partial Summary Judgment, Docket Item #36 and #37, Filed August 18, 2011**

While his Motion for Leave to Amend Complaint was still pending before the court, Plaintiff filed a Motion for Partial Summary Judgment on August 22, 2011. The procedural posture of this motion for summary judgment is suspect when a motion to file an amended complaint is still pending and before Defendants has had a chance to answer. Moreover, the Motion for Partial Summary Judgment should be stricken because it fails to comply with local rules requiring double spacing and only 25 pages of argument. See District of Utah Rules 7-1(b)(3) and (4) and Rule 10-1. As it stands, Defendant's opposition to the Motion for Partial

---

<sup>1</sup> Defendants do not object to Plaintiff filing The First Amended Complaint.

Summary judgment is due on September 19, 2011. Defendant asks that it be allowed to wait to file its opposition (or other responsive pleading) to the Motion for Summary Judgment until after this court rules on the Motion for Leave to Amend the Complaint so that it is clear which complaint is at issue and which causes of actions are in dispute. As it stands, it would be highly complicated for Defendants to respond. Defendants request 28 days from the date of the court's ruling to respond.

Respectfully submitted.

DATED this 1<sup>st</sup> day of September 2011.

**SCALLEY READING BATES  
HANSEN & RASMUSSEN, P.C.**

A handwritten signature in cursive script, appearing to read "Grace Acosta", written over a horizontal line.

S. Grace Acosta  
Attorneys for Defendants